U.S. Department of Labor

Board of Contract Appeals
1111 20th Street, N.W.
Washington, D.C. 20036

Appeal of

JEWELL LEWIS SHANE
(Contract No. J-9-M-4-0081)

DATE ISSUED: May 31, 1990
CASE NO. 87-BCA-11

Paul Komarek, Esquire
For the Appellant

Margrit W. Vanderryn, Esquire
For the Respondent

BEFORE: EDWARD TERHUNE MILLER
SAMUEL B. GRONER
STUART LEVIN
Members, U.S. Department of Labor
Board of Contract Appeals

DECISION

Statement of the Case

This is a timely appeal under the Contract Disputes Act of 1978, 41 U.S.C. §601 et seq., from a final decision of Melvin Goldberg, Contracting Officer, dated May 20, 1987. The Contracting Officer denied the claim of the Appellant, Jewell Lewis Shane, for additional compensation in the amount of $8,403.50 for accounting services performed under U.S. Department of Labor Contract No. J-9-M-4-0081 (Contract). This Board of Contract Appeals has jurisdiction of the dispute pursuant to 41 C.F.R. §29-60 (1984).

The Appellant claims, in substance, that, although she was the designated Partner under the Contract, she performed certain billing and other necessary supervisory tasks for which Appellant was entitled to be paid additional compensation of $8,403.50 at the Audit Manager/Supervisor rate specified in the Contract. Appellant contends that part of this amount is payable pursuant to a commitment in the form of two task order modifications authorizing payment which were signed by a USDOL employee participating in the administration of the Contract, but not by the Contracting Officer.

The Contracting Officer contends, in substance, that the disputed services performed were compensated to the extent required as indirect costs within the categorical billing rates specified by the Contract. He also contends that, to the extent that the

services performed exceeded those compensable within the categorical billing rates, they were services in excess of those that were required by the Contract. As such, they were performed without the prior approval of the Contracting officer, and Appellant is not entitled to additional compensation for them.

A hearing was conducted in Cincinnati, Ohio, on March 28, 1989. Appellant was present and was represented by counsel. The Contracting Officer was also represented by counsel. After considering the record developed at the hearing and the briefs of the parties, this Board has determined that Appellant is not entitled to the additional compensation requested.

Issue

Is the Appellant Shane entitled to the additional compensation requested for work performed by Shane, the designated Partner, at the Audit Supervisor/Manager rate under the Contract?

Findings of Fact

1. The Contract, No. J-9-M-4-0081, is a labor-hour contract that was executed on July 11, 1984 by the U.S. Department of Labor (USDOL) and the Appellant, Jewell Lewis Shane, whose accounting firm was at all relevant times an individual proprietorship. The Contract provided for professional accounting and audit services supportive of the Office of Inspector General (OIG), USDOL (AF 25). The audits in which Appellant was engaged under the Contract were part of a nationwide evaluation of job training services as prescribed in the "Audit Guide" prepared by the Dallas Region OIG of USDOL for the Audit of JTPA (Job Training Partnership Act of 1982) Participant Training and Services (AF 25; Exh. 11).

2. Various aspects of Contract administration under the Contracting Officer were handled by various OIG personnel, including John Seay, Regional Inspector for Audit; Robert Hall, Assistant Regional Inspector General for Audit, who frequently acted on Seay's behalf, and who was designated Task Monitor under the relevant task orders; Terry Terrell, Contracting Officer's Technical Representative; and Carlos Estringel, an auditor with the Dallas Regional Audit Office (AF 82,99, 103; Tr. 115, 162, 185-86).

3. The JTPA evaluation project was designed by Hall. The type of "audit" devised to' evaluate the JTPA program effectiveness was a nonfinancial "economy and efficiency audit." Such an audit is distinguishable from a "financial compliance audit," and is designed to reduce waste and inefficiency in an organization by evaluating its operations in order to determine

whether procurement and the use of personnel adhere to prescribed norms and are efficient. The relevant audits involved the collection of data from the records at specified Service/Delivery Area ("SDA") sites in various states. (Exh. 1 at 11-12; Tr. 117, 119, 122)

4. In accordance with the Contract design, Hall assigned functions usually performed by contract auditors to the Dallas OIG. He caused the gathering of raw data from the records located at the designated SDA audit sites to be contracted out to certified public accounting firms, including Appellant. (Tr. 118-19, 168) Accordingly, the OIG analyzed what kind of data was required, selected the manner in which it would be entered into the OIG computers by the contractor, established the standards under which the data was to be collected, and verified the data before its insertion into the main computer (Tr. 55-57, 170). The OIG developed the work sheets on which data needed for the study was to be collected, provided on-site monitors, and assumed responsibility for compiling and reviewing the data and issuing the final report (Tr. 123, 125, 170, 182; Exh. 11, Secs. I-VII). The OIG prepared the Audit Guide to be used by the contractor at the audit site (Exh. 11). The work contracted out to CPA firms was described as "fill[ing] in the blanks" on work papers provided by the Dallas OIG office according to the Audit Guide (Tr. 118; Exh. 11, Sec. V, A-J). The contractors' work was controlled by on-site Audit Manager/Supervisors of the CPA firms, by OIG staff, and by OIG trained field monitors (Tr. 117, 123, 169). The Contract was specifically designed to maximize data collection, which was its principal purpose, through onsite staff personnel, and to minimize the costly involvement of Partners of the contractors (Tr. 169-70, 182).

5. The relevant task orders specifying the work to be performed under the Contract were Task Order Number 102 (TO 102), governing a JTPA audit in Springfield, Ohio, and Task Order Number 103 (TO 103), governing a JTPA audit in Akron, Ohio (AF 80-86, 97-103; Exh. 11). The Contract specifically provided, "the Contractor is hereby notified to honor only written Task Orders signed by the Contracting Officer." Each task order specified that Appellant "provide [USDOL] with 16 hours of partner time to administer this task order and the other hours were to be direct involvement at the audit sites." (AF 48; Tr. 191)

6. The Contract identified five labor-hour categories, including the categories of "Partner" and "Audit Manager/Supervisor," which are the categories relevant to this dispute. The Contract identified these five categories as among those "categories-of-labor" and "levels-of-effort" which were

applicable to all work to be performed under the Contract. Comparable Labor Categories were identified in the two task orders. The categories-of-labor were to be performed at hourly rates specified in the Contract and two task orders. Those hourly rates were expressly defined in the Contract to include "direct and indirect labor, overhead and profit." The Contract provided that the specified hourly rates were to include "report preparation ... and all associated task order deliverables." The Contract also provided that, under its terms as a labor-hour contract, payments would be computed by multiplying the specified hourly rates by the number of direct labor hours performed, and that these rates would "include wages, indirect costs, general and administrative expense, and profit." (AF 26, 66, 83, 100) These provisions were consistent with the Cost Breakdown in the Appellant's proposal, which defined direct costs to include salaries and employee benefits, and indirect costs to "include all other expenses (overhead, general and administrative)." (Exh. 1 at 5)

7. Particular personnel selected by Appellant and approved by USDOL on the basis of submitted resumes were designated to perform the labor categories of Partner, Manager, and Senior Accountant. Key supervisory personnel were approved by USDOL, in part because of project related training which they received from USDOL, and in part because they met specified requirements for experience. The Contract prohibited removal or diversion of such designated personnel from the Contract or task order except upon prior written authorization of the Contracting Officer. (AF 38, 39, 98; Exh. 1 at 28-33; Tr. 170-72) Shane was designated as the Partner, and Jane Borgelt as the Audit Manager/Supervisor in the two relevant task orders (AF 82, 99).

8. The Contract expressly provided that the responsibilities of a "Partner" included liaison with USDOL, final report review, quality control, and initial contact with the auditee identified under any particular task order issued pursuant to the Contract (AF 37). Because the Contract was designed to minimize the responsibilities and costs of Partner performance under the Contract, the Partner was only responsible for coordination and administration of the applicable task order, not day-to-day direct work on the job (Tr. 168-70, 182; Exh. 6 at 12). Consequently, a minimal number of Partner hours was allocated to performance of the Contract; 16 hours were allocated to each task order. Like the other provisions of the Contract, this minimal allocation was generally consistent with the amount of categorical labor costs allocated to other similar contracts let by the Dallas Region OIG. (Exh. 3 at 3-4; Tr. 125-26, 168-70, 203-04).

9. The Contract provided that the responsibilities of an

"Audit Manager/Supervisor" included management and supervision of the audit team, and on-site quality control (AF 37). The Contract and task orders provided for only one designated Audit Manager/Supervisor, Jane Borgelt. The work performed by the Audit Manager/Supervisor, essentially at the job sites, was significantly different from the supervisory work that Shane performed, almost exclusively at her Cincinnati office. (AF 82, 99; Tr. 67-71, 74, 106-10, 123, 135, 138-39, 145-46, 151-53, 157, 162-64; 191-93, 198)

10. The Contract provided, however, "When performing responsibilities in a lower category than eligible, the individual shall be billed at the lower category. For example, if a partner is performing audit steps of a senior [accountant], that time shall be billed at the senior accountant level." (AF 37) Thus, the Contract contained a provision implicitly allowing qualified personnel to perform the work of subordinates and to be compensated at the rate applicable to the work of the subordinate, at least under some unspecified circumstances.

11. Borgelt, who was at all relevant times the designated Audit Manager/Supervisor, received a week of particularized USDOL training with respect to the "Audit Guide," for performance of the Contract. This training was given by OIG staff in Dallas in order to qualify her to function as a supervisor of the audit function at the audit sites where the records being audited or the data to be obtained were located. (AF 38, 82, 97-99; Tr. 67-69, 121-23, 127-28, 146-49, 191-93)

12. Shane, though designated as Key Personnel, was not trained by USDOL for the duties of Audit Manager/Supervisor under this particular Contract. Because she lacked such training, she was not considered to be qualified or authorized by the Contract administrators to perform the duties of supervisor of the audit function on site prescribed for Audit Manager/Supervisor under the Contract. Such work, if performed by her, would not have been deemed reliable by the Contract administrators. The record does not establish to what extent Shane may have performed any audit steps pursuant to the Audit Guide. There was testimony, however, that none of her data were rejected. (AF 38, 82, 99; Exhs. 5, 7; Tr. 121-23, 125-27, 130-32, 136-37, 148-49, 151-53, 184, 191-94, 198-99)

13. The work Shane performed in relation to the Contract was performed in her home office in Cincinnati. The Contract did not specify that all audit work under the Contract was required to be performed at the audit site. The audit site was defined by USDOL in testimony as the place where the records or data that needed to be obtained were located. Audit teams were authorized to bring back

work from the audit site to be processed at the home office. Shane did not work to any significant extent, if at all, at the audit sites and did not do the "on-site" work in her home office. (Exhs. 5, 7; Tr. 65-69, 121-23, 130-32, 149-53, 193-94)

14. No substantive Audit Manager/Supervisor work by Shane was actually documented in the record. The fact that Shane had prior experience with audits under the Job Training Partnership Act was not enough, in the opinion of the Contracting Officer, to qualify her for Audit Manager/Supervisor work under the Contract, because the work under the Contract was "a totally different effort." The Board finds that Shane did not have training which was comparable to that required by USDOL to qualify for performance as Audit Manager/Supervisor under this Contract, and that such training was necessary to reliable performance in such capacity, because of the distinctive characteristics of this auditing project. (Tr. 148-53) The Board also finds that USDOL did not authorize her to do such work.

15. As the proprietor of her small accounting firm, Shane was regularly involved in billings and other administrative activities which included collecting and sorting time sheets and records of travel costs and other direct expenses. Some of these records were handled by Shane because they were treated by her as confidential. Shane testified that she billed for such administrative activities as direct hours expended on each client to whom such activities related. The Contract administrators determined that she was entitled to charge some aspects of billing as a relatively small direct cost of Partner services. Shane monitored overall operations and contract performance, and sometimes conducted interviews and performed other routine tasks when she was the only person available. The Contracting Officer and his subordinates involved in administration of the Contract, do not dispute that Shane performed this work as shown on her time sheets. Charging such activities as direct labor, however, was not consistent with the OIG plan which governed administration of the Contract and provided for, the compensation of Shane, as the designated Partner, and others performing direct labor under the Contract. This was because the Contract had a substantial amount of money allowed for overhead and administrative costs incorporated into the labor rate structure. (Exhs. 5, 6 at 6, 7; AF 119, 134-37; Tr. 67-72, 80, 82, 107-13, 138, 144-47, 177-78, 181-82, 198, 208-09)

16. TO 102 dated June 2, 1986, was executed by the Contracting Officer on June 18, 1986, and was subsequently modified four times (AF 75-86). A total of $69,888 was authorized to be expended under TO 102, as modified (AF 88). TO 103 dated July 3, 1986, was executed by the Contracting Officer on July 15, 1986, and

was modified twice (AF 87-103). A total of $65,693 was authorized to be expended under the TO 103, as modified (AF 76). Each task order specified the work to be performed, procedures to be followed, and rates of compensation to be implemented, in a similar manner (AF 80-86, 97-103). Each task order provided that no work could be performed under the task order until it had been signed by the Contracting Officer, and that "any changes in the Deliverables, Period-of-Performance, or Compensation sections of this Task Order must be made through an official modification." (AF 81, 82, 98, 99; Tr. 184-87). Appellant invoiced total claims under TO 102 and TO 103 of $140,472. A maximum of $135,581 was authorized for the two task orders under the Contract, as amended by modifications executed by the Contracting Officer. (AF 111-14; Exh. 7)

17. Appellant's work under TO 102 began on June 26, 1986 (Exh. 6 at 10). TO 102, like TO 103, allotted only 16 labor hours to the Partner category, 360 hours to the onsite supervisor category, and 720 to the computer specialist category (AF 100). Appellant's request for more Partner hours was specifically rejected by the Dallas OIG Office on the grounds that (1) the Audit Guide was detailed enough to eliminate the need for normal partner-type guidance, and (2)a field monitor from the Dallas Office would be available on site to assist with supervision (Exh. 6 at 12). A first modification of TO 102 was executed on August 28, 1986. Subsequently, additional modifications were requested and executed which authorized additional staff hours and related compensation, but not Partner hours, under both TO 102 and TO 103. (AF 93-96; Exh. 6 at 3-6; Tr. 81-82)

18. Appellant's total claim amounts to $8403.50 which relates to work by Shane related to the two task orders (Exh. 7; Tr. 83). $3512.50 of this claimed amount was disallowed as not qualifying for payment, regardless of the availability of funds authorized under the Contract. $4891 of the total amount disallowed was requested by Appellant by means of two proposed modifications, Modification No. 5 to TO 102 and Modification No. 3 to TO 103. These modifications were signed by Shane, and by Robert Hall, the Task Monitor, who had authority under the task orders to answer questions pertaining to the scope of work and to authorize some deviations from the original scope of work in writing. The modifications were signed by Hall on behalf of the Regional Inspector General for Audit, but were never executed by the Contracting Officer. Hall was not authorized by the terms of the Contract itself to approve any change in the scope, price, terms or conditions of the Contract without an official modification submitted for the Contracting officer's signature. (AF 54, 82, 99; Exhs. 8, 9; Tr. 83-85)

19. Appellant's first invoice under To 102, Number 329, was dated June 30, 1986. It billed USDOL for 15 of the 16 hours of Partner time allowed under the task order. This early use of almost all of the allowable Partner time raised an immediate problem for the contract administrators. Immediately following submission of that invoice, Appellant was warned by Carlos Estringel that she would not be allotted additional Partner hours. (AF 121, 144; Exh. 6 at 8; Tr. 128-29, 175-76, 195-96)

20. Appellant's invoice Number 335 under TO 102 was submitted on July 31, 1986. It billed USDOL for the remaining one hour of her time allowable at the Partner rate and 25 hours at the Audit Manager/Supervisor rate. The 25 hours billed at the Audit Manager/Supervisor rate were disallowed by USDOL because, among other stated reasons, they reflected work outside Appellant's labor-hour category under the Contract. Estringel also determined from time sheets submitted by Appellant, and advised Appellant that the "billing" and other tasks in which Appellant had been engaged during the 25 hours were administrative tasks compensable as overhead and not separately compensable as direct labor costs. The number of such hours which Appellant charged for such work was also deemed to be excessive for such work. Appellant disputed the determination, asserting that, unlike practice in most firms, it was her practice as a partner in a small firm to be involved in billing and other administrative work, in part, because of efficiency and, in, part because of considerations of confidentiality. However, she was advised by Hall, Estringel's supervisor, on October 24, 1986, that the administrative work in question was part of the overhead costs to be compensated as a component of direct labor costs as specified in the Contract, and would not be separately compensated, unless a contrary determination were made by the "Contracting Officer. (AF 117-19, 120, 134-37, 143-445; Exh. 6 at 6-7; Tr. 67-72, 80-81, 136-39, 161-64, 177-79, 187-88, 208-09)

21. In addition to the 16 partner hours billable under each of the two task orders, Appellant ultimately billed an additional 197 hours of her own time in the Audit Manager/Supervisor category under the two task orders. She was ultimately allowed compensation for 19 of those hours billed at the Audit Manager/Supervisor rate. (AF 144-56; Exh. 14) Compensation for those 19 hours was allowed by Hall and Estringel as an accommodation, because they were concerned that there might have been some misunderstanding by Appellant, a relatively inexperienced government contractor, and because there was a need to cope with a lack of Partner hours to continue performance of the task orders (Exh. 8, 9; Tr. 77, 82, 130-32, 141-44, 175-77, 182-83, 193, 210-11).

22. On February 18, 1987, and April 17, 1987, Appellant appealed the OIG auditors, determinations which had rejected Appellant's claims related to hours expended by Shane to the Contracting Officer. On May 20, 1987, the Contracting officer issued his Final Decision denying the requested compensation. The Contracting Officer stated in his final decision that the "disallowance [of hours worked under the 'Supervisor', category] was based on [Shane's] not having worked as a supervisor directly on the audit at the audit site." Such supervisory work at the audit site would have included "interviewing participants, analyzing service provider contracts, selecting universes of contracts and participants, and filling out required work papers in compliance with the audit steps required by the audit code."(AF 113) The Contracting officer also noted that the tasks and duties which Shane indicated she had performed under the Task Orders were "reviewing time and expense reports, billings, etc.," which "are clearly the type of administrative and managerial tasks your firm was compensated for in the 'Partner' labor-hour authorization. In addition to the specifically authorized partner hours, your firm receives compensation for overhead, including general and administrative costs of doing business in each labor hour worked in every labor category. The individual billing rates for each labor category contain elements of direct labor, fringe benefits, indirect overhead costs, general and administrative costs, and profit," as specified in Contract Clause B.1. On July 30, 1987, Appellant appealed the Contracting Officer's decision to this Board of Contract Appeals. (AF 6, 111-14, 117-18)

Discussion and Conclusions of Law

Neither the necessity for the work which Shane herself performed in relation to the Contract, nor the fact that she performed such work is disputed by the Contracting Officer. The Contract contemplated, and did not prohibit, in principle, the Partner's performance of lesser categories of work or compensation for such work at the rate provided for that category of work. However, Jane Borgelt, as the designated Audit Manger/Supervisor, was given specialized training by the Dallas OIG as provided by TO 102, so that she could properly gather and process the relevant information gathered at the audit sites in conformity with training. In effect, Shane's performance of the disputed work represented an authorized change under the Contract for which Appellant is not entitled to be compensated.

The Board finds that the work Shane performed, even though it may have been related and necessary to performance of TO 102 and TO 103, is not discretely compensable as direct labor under the terms of this labor-hour Contract. Shane was repeatedly advised,

when she requested such compensation for such work, that such work was not compensable, either under the allocation of partnership hours under the Contract, which were never increased, or under the subordinate labor category of Audit Manager/Supervisor, except for nineteen hours ultimately allowed by the Contracting Officer as a reasonable accommodation. The fact that nineteen extra hours were ultimately allowed to be compensated under this category, although 197 were requested but not approved for compensation, does not create an estoppel or otherwise entitle Shane to compensation for the balance of the hours claimed under this labor category.

In accordance with the established principles of a labor-hour federal procurement contract, the Contract provided that overhead and general and administrative expenses were to be included in the negotiated hourly rates for the various categories of labor specified in the Contract. The work of billing which Shane performed may have been a necessary concomitant of contract performance, but the amount of time she recorded for this purpose was deemed excessive by some of the Contract administrators. The fact that the work in question was performed by Shane, and not someone else, does not affect the nature of the work, or the rate of compensation applicable to the work under the Contract.

Shane was on continuing notice that her interpretation of the Contract regarding her entitlement to compensation as an Audit Manager/Supervisor was disputed by the USDOL personnel charged with administration of the Contract. This fact precludes an estoppel against the Government. See United States v. Georgia Pac. Co., 421 F.2d 92, 96 (9th Cir. 1970) Shane continued to perform the disputed work despite more than adequate notice from the responsible Contract officials that payment for the work had been and would be refused.

Shane submitted the last two disputed invoices after the work had been done. Thus, she has not proved that Hall's signature on the proposed modification induced her to perform work or take any other action to her detriment that she would not otherwise have performed or taken under the Contract. The two modifications were prepared after the fact, as vehicles for a request for payment for the disputed work in question as part of a final winding up of the Contract. Although Hall apparently suggested this approach and signed the modifications, it is clear that Hall did not have independent authority to bind the government to make the disputed payment that Shane demanded. Shane is charged with knowledge and burdened with the consequences of that fact as a matter of law. See Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947). Shane undertook to appeal the adverse ruling when it was initially given by the Contracting Officer's subordinates, which was her right. But

when she continued to perform the work without the Contracting Officer's prior approval, and despite notice that her claim was disputed, she did so at her peril.

Even if she had obtained substantial encouragement from Hall, as she claimed she had, she did not prove the elements of an estoppel. See Heckler v. Community Health Services of Crawford County, Inc., 467 U.S. 51 (1984); United States v. Georgia Pac. Co., supra. Hall testified that he told Shane that some extra hours might be allowed. But he also testified that he had not contemplated a number of hours of the magnitude that Shane ultimately claimed, and the history of disallowances supports that position. The Board concludes that, regardless of what impression Shane might have obtained from Hall's encouragement, she was on periodic and timely notice that there was no assurance that payment would ultimately be approved, and there were strong indications to the contrary. Having failed to obtain assurance of a favorable determination by the Contracting Officer before proceeding as though her interpretation of the Contract would prevail, she proceeded at her peril.

This case does not involve a government windfall attributable to misleading government assurances to the contractor. Shane claimed that the work she did was essential to the Contract. The evidence establishes that the OIG's design of the overall evaluation contract and the Contract implementing it was intended to reduce the involvement of Partners in day-to-day work on the job and the related costs of such involvement, because of the nature of the information gathering that was involved. There was no evidence that Shane was treated differently from other contractors similarly situated, except to the extent that some accommodation was made to her idiosyncratic administrative procedures. That accommodation was made because of her perceived inexperience with government contracts and possible misunderstanding. The Board finds that the services Shane performed beyond the sixteen hours of work as a Partner were only indirectly compensable as overhead or administrative costs, which are components of payment for direct labor under the Contract, and were not separately compensable as direct labor charges.

Moreover, if a contractor such as Appellant proceeds on her own initiative to perform questionable work without direction from the government, she is not entitled to an equitable adjustment to compensate her for such work, even if there were a possible conflict in the specifications defining the contract work. See J.J. Bonavire Co., ASBCA No. 29846, 89-3 BCA 22,128 (1989). In this instance, however, no such conflict has been demonstrated. Nor would Appellant be entitled to an equitable adjustment because the

method of performance Appellant intended to use was frustrated by an unambiguous specification governing the Contract. See Continental Heller Corp., GSBCA No. 7494, 89-1 BCA 21,543 (1986); cf. Smith-Cothran, Inc., DOTBCA No. 1931f 89-1 BCA 21,554 (1989).

Billing is normally an ad administrative function under a labor-hour contract. Appellant has not advanced persuasive argument or cited authority to the contrary. She had tried unsuccessfully to obtain what, in effect, would have been a change in the terms of the Contract. The Contracting Officer's interpretation of the Contract was reasonable, fair, and in accordance with the express provisions of the Contract. His interpretation has not been shown to be inconsistent with the conventional administration of a labor-hour procurement contract. Had Shane refused to perform further because her interpretation of the Contact was not accepted, the Contracting Officer would have had his remedies.

The Government has the right to insist on strict compliance with the specifications of a contract. See MechCon Corp., GSBCA No. 8415, 88-3 BCA 20,889 (1988). A contractor is not entitled to payment for deviant work. See California Reforestation, AGBCA No. 87-226-1, 89-1 BCA 21,301. This Board lacks authority to grant relief on a quantum meruit, implied-in-law theory, even if there were some basis in the record for such a claim as suggested by Appellant. See Henry Burge & Alvin White, PSBCA 2431, 89-3 BCA 21,910 (1989).

The fact that Hall signed the two final modifications that the Contracting Officer ultimately refused to sign does not enhance Appellant's claim. Hall's act was not approved or ratified by the Contracting Officer, who had sole final authority to approve the modifications, as Appellant well knows. This authority was specified in the Contract and is controlling. See S.W. Marine of San Francisco, Inc., ASBCA No. 29,953, 87-3 BCA 20,003, modified on reconsideration, 88-2 BCA 20,539 (1988).

ORDER

The claim of Jewell Lewis Shane is DENIED.

EDWARD TERHUNE MILLER
Acting Chairman,
U.S. Department of Labor
Board of Contract Appeals

Concur:

SAMUEL B. GRONER
Member

STUART LEVIN
Member

Washington, D.C.